HELLMUT LAUE
ARTHUR J. DEVINE

IBLA 81-563 Decided November 4, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims CA MC 45480 through CA MC 45485 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

   If the strict proof of assessment work filing requirements of FLPMA are not met, a mining claim is thereby abandoned, whether the filing is only 1 day late or 100, and regardless of any other reason.

3. Mining Claims: Assessment Work

   The timely filing of evidence of assessment work with a state or county does not, under sec. 3833.4(b) of the regulations, constitute a justification for failure to meet the filing requirements of FLPMA.

APPEARANCES: James Andrew Davis, Esq., Fairfax, California, for Hellmut Laue; Arthur J. Devine, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Hellmut Laue and Arthur J. Devine have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 18, 1981, declaring appellants' lode mining claims, CA MC 45480 through CA MC 45485, abandoned and void for failure to file evidence of annual assessment work on or before December 30, 1980, pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a). The evidence of assessment work was filed with BLM on December 31, 1980.

Four of the claims in this case were located more than 50 years ago (the oldest going back to 1890), with the fifth having been located in 1954. They were filed with BLM for the first time on October 15, 1979, together with proof of 1979 assessment work. The evidence of assessment work for 1980, although dated September 9, was not filed with Mariposa County, California, until December 30, or with the BLM until the following day.

Documents in the file reveal that appellant Devine was conveyed a one-fourth interest in the claims by appellant Laue on May 19, 1977, to resolve a past partner relationship, and that if Laue did not make certain payments to Devine by March 22, 1982, or thereabouts, Laue would have to convey the rest of his interest to Devine. The same document recites that this stipulation was intended to motivate Laue either to open the mine or to sell it, since Laue had not derived any substantial earnings from the property during the 25 years in which it had been in his control. Appellant Devine's statement of reasons indicates, among other things, that the family and friends of appellant Laue consider him incapable of managing his affairs and that he could be in physical danger from armed claim jumpers "who are presently in the process of plundering [appellants'] most treasured discovery site."

The file also contains a letter to the Board from one William Cate, who identifies himself as one of the claim jumpers referred to by Devine, to the effect that Laue's agreement with Devine was signed under duress, that Laue's proof of labor was also filed late with Mariposa County, that Laue had refused BLM's subsequent suggestion to refile his claims, and that no force or threat of force was used against Laue by Cate or his associates. Cate has not requested, nor has the Board granted him, status as an intervenor. The statement of reasons filed on behalf of appellant Laue indicates that in February 1981 the subject claims were relocated by William Cate and other adverse claimants and, further, that in March 1981 the claims were forcibly entered by these parties, who forced Laue off the claims. Laue requests that his title to these claims be quieted.

As indicated above, the file in this case is replete with conflicting allegations. However, resolution of these disputes is not material to the disposition of this appeal. We mention them only to observe that BLM was not entirely without justification in seeking, or the Congress without wisdom in enacting, legislation imposing conclusive presumptions of abandonment if the strict filing requirements of FLPMA are not scrupulously followed.

[1, 2] As FLPMA and its implementing regulations are written, and as this Board has so frequently held, if a claimant does not file his evidence of assessment work with the proper BLM office on or before the due date (in this case, December 30, 1980), it matters not whether he is 1 day late 1/ or 100, whether the delay was his own fault or that of the Postal Service, whether he may have been travelling outside the country on the filing date, or whether he was even aware of the consequences of failure to file. Regardless of reason, a failure to file on time is conclusively deemed to constitute an abandonment of the mining claim. 43 CFR 3833.4(a); Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[3] Appellant Devine, in his statement of reasons, further urges that if Mariposa County's filing requirements were properly met, a claimant is protected by 43 CFR 3833.4(b) from the consequences of 43 CFR 3833.4(a)'s conclusive abandonment presumption. Without deciding whether a proper county filing was made in this case, we hold that the accomplishment of a proper state or county filing has absolutely no bearing on section 3833.4(a) or on the filing requirements of FLPMA. Silvertip Exploration & Mining, 43 IBLA 250 (1979). What section 3833.4(b) actually says is that a defective or untimely state or county filing does not of itself constitute a failure to file under FLPMA. Neither does a valid or timely state or county filing constitute a FLPMA filing. Alaskamin, 49 IBLA 43 (1980). The only import of this regulation is that, except as otherwise specifically provided in FLPMA and its implementing regulations, there is no relationship between state or county filings and FLPMA filings: the latter are required regardless of state or local filing requirements.

As to the allegations of appellant Laue that he was forcibly driven off his claims by adverse parties who have relocated the claims, it must be noted that state courts (rather than the Department of the Interior) generally have jurisdiction to determine the right of possession to mining claims between rival claimants. Duguid v. Best, 291 F.2d 235 (9th Cir. 1961), cert. denied, 372 U.S. 906; see also 30 U.S.C. §§ 30, 53 (1976); Blackburn v. Portland Gold Mining Co., 175 U.S. 571 (1900); John W. Pope, 17 IBLA 73 (1974). To the extent that appellant was actually physically present on the claims and diligently working them in a bona fide effort to develop a discovery, and to the extent that the land remained open to mining location, the doctrine of pedis possessio may provide an adequate remedy in state court against forcible

1/ G. R. Marguardson, 49 IBLA 114 (1980).

ejection by an adverse party. See generally, T. Fiske, Pedis Possessio -- Modern Use of an Old Concept, 15 Rocky Mountain Mineral Law Institute 181 (1969). However, whether Laue or Cate has the better right to the claim in light of its statutory abandonment under FLPMA is not for this Board to decide.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge